

- (iii) Upon issuance of these directions by Hon Justice Chacha Mwita on the 20.11.2018, the file could not be traced from the Nairobi Registry to facilitate movement to Eldoret Law Court.
- (iv) Due to this difficulty, the Applicants did file the Application known as NAIROBI HIGH COURT MISC APPLICATION NO. E008 OF 2025 seeking for a reconstruction of the file that could not be traced.
- (v) However, before the Application known as NAIROBI HIGH COURT MISC APPLICATION NO. E008 OF 2025 could be heard and determined, the original file known as NAIROBI CONSTITUTIONAL PETITION NO. 416 of 2018 was traced as Eldoret Environment & Land Court as ELC NO. 7 B OF 2019.
- (vi) The Applicants are of the view that the transmission of the original file known as NAIROBI CONSTITUTIONAL PETITION NO. 416 OF 2018 to Eldoret and the assignment of the new number ELDORET ELC CASE NO. 7 B OF 2019 which is the present suit was never communicated to them.
- (vii) Due to this lack of communication, the present suit was dismissed on the 03.06.2025 due to want of prosecution.
- (viii) It was after the dismissal of the present suit on the 03.06.2025 that the Applicants' Counsel did get information that the file was actually before the Eldoret Environment and Land Court.
- (ix) The Applicants prayer was that the dismissal order issued on the 03.06.2025 be set-aside and the suit reinstated for hearing on its merit.
- (x) The Applicants did plead that the dismissal of the suit for want of prosecution was not in the interest of the dispute before the Court and they should be given a hearing so that justice can be done.

- (xi) The Applicants were of the view that the present Application was filed promptly and in good faith.
3. The present application was duly served on all the Respondents herein.
 4. However, it was only the 7th, 8th and 9th Respondents who did oppose the same by filing a Replying Affidavit dated 07.11.2025.
 5. In the 7th, 8th and 9th Respondents Replying Affidavit, the present Application was opposed on the following grounds; -
 - (i) First and foremost, the present Application had been filed by the 1st Applicant without the authority to depone on behalf of the 2nd Applicant which is contrary to Order 1 Rule 13(1) & (2) of the Civil Procedure Rules.
 - (ii) Secondly, the present Application was incurably defective, frivolous and vexatious for the reason that it was seeking to relitigate issues that had been determined in the proceeding known as ELDORET ELC CASE NO.392 OF 2015.
 - (iii) According to the 7th, 8th and 9th Respondents, the Applicants Counsel was duly notified of the transmission of the original file from Nairobi to Eldoret through a letter dated 12.04.2022 which was copied to them.
 - (iv) On the 24.05.2024, the Court did issue and serve a Notice For Dismissal on the Applicants Counsel.
 - (v) In the Notice of Dismissal dated 24.05.2024, the Applicants Advocates were duly informed that the present suit would come up on the 03.06.2024 to show cause why the same should not be dismissed for want of prosecution.

- (vi) Unfortunately, the Applicants Counsel despite receipt of the Notice of Dismissal dated 24.05.2024 did not attend Court on the 03.06.2024.
- (vii) In essence, the 7th, 8th and 9th Respondents did plead that the Applicants had lost interest in the present matter by being inactive and not pursuing their proceeding as expected.
- (viii) In addition to the above, the 7th, 8th and 9th Respondents did plead that the Applicants herein were in the habit of forum shopping by filing numerous proceedings over the same dispute and thereafter abandoning the same.
- (ix) In particular, the 7th, 8th and 9th Respondents did point out that the Applicants had filed a proceeding known as ELDORET ELC CASE NO. 392 OF 2015 over the same subject matter and the same issues determined through a Judgement on the 28.06.2017.
- (x) In the Judgement pronounced on 28.06.2017 in the proceeding known as ELDORET ELC CASE NO. 392 OF 2015, an Order of Eviction was issued against the Applicants herein.
- (xi) Further to the Judgement pronounced on the 28.06.2017 in the proceeding known as ELDORET ELC CASE NO. 392 OF 2015, the ownership and possession of the suit property had also been determined by the Supreme Court in SUPREME COURT PETITIONS NO. 32-E036, 35-E038 and 36-E029 OF 2022.
- (xii) Consequently, the reliefs being sought in the present suit cannot be granted by this Court for being misconceived and time barred.

- (xiii) The 7th, 8th and 9th Respondents did state that the present Application had been brought after an inordinate delay of over 10 months from the date the Order for Dismissal was issued.
- (xiv) The 7th, 8th and 9th Respondents were of the view that the issues being raised for determination in the present suit had already been considered and resolved in the proceedings known as ELDORET ELC CASE NO. 392 OF 2015, ELC PETITION NO. 10 OF 2018 and COURT OF APPEAL CIVIL APPEAL NO. 296 OF 2019.
- (xv) As such, the Applicants' prayer of having the present suit reinstated for hearing would offend the doctrine of finality and interfere with the fruits of a lawfully obtained judgement by the 7th, 8th and 9th Respondents.
- (xvi) In conclusion, the 7th, 8th and 9th Respondents sought this Court to dismiss the present Application.
6. Upon service of the Replying Affidavit by the 7th, 8th and 9th Respondents, the Applicants did not file any Further and/or Supplementary Affidavit thereof.
7. The Court did direct that the present Application would to be canvassed by way of written submissions.
8. The Applicants unfortunately did not file any submissions while the 7th, 8th and 9th Respondents did file their submissions on the 16.12.2025.
9. Be as it may, the Court had indeed perused the present Application, the Response by the 7th, 8th and 9th Respondents as well as the submissions filed herein and identifies the following issues for determination; -

**ISSUE NO.1- ARE THERE SUFFICIENT GROUNDS TO SET-
ASIDE THE DISMISSAL ORDER OF 03.06.2024 &
REINSTATE THE SUIT?**

ISSUE NO.2- IS THE PRESENT APPLICATION MERITED OR NOT?

ISSUE No. 3- WHO SHALL BEAR THE COSTS OF THE PRESENT APPLICATION?

10. Having identified the above issues for determination, the Court will now proceed to discuss them as herein-below.

ISSUE NO.1- ARE THERE SUFFICIENT GROUNDS TO SET-ASIDE THE DISMISSAL ORDER OF 03.06.2024 & REINSTATE THE SUIT?

11. The Applicants herein are seeking to set-aside the Dismissal Order issued on the 03.06.2024 for want of prosecution and reinstatement of this suit for hearing.
12. The Applicants are relying on two principle grounds which are the lack of information from the Court that the file had been transferred to Eldoret in 2019 and the failure to be informed about the Notice to Show Cause dated 24.05.2024.
13. As regards the first ground which is the transfer of the file from Nairobi to Eldoret, the Applicants do confirm that the Order made on 20.11.2018 was pronounced in their presence.
14. However, the Applicants plead and submit that the file was misplaced within the Court registry in Nairobi thereby resulting to the filing of a NAIROBI HIGH COURT MISCELLANOUS APPLICATION NO. E008 OF 2025 to reconstruct the file.
15. However, during the hearing of the proceeding known as NAIROBI HIGH COURT MISCELLANOUS APPLICATION NO.E.008 OF 2025, it was discovered that the present file had actually been transferred to Eldoret way back in the year 2019.

16. The Applicants did state that they were not informed of the transmission of this file from Nairobi to Eldoret and therefore could not take the necessary steps to prosecute the same.
17. The 7th, 8th and 9th Respondents on the other hand did oppose the Applicants grounds.
18. To begin with, the 7th, 8th and 9th Respondents did admit that an Order of Transfer was indeed made on the 20.11.2018 for the file to be moved from Nairobi to Eldoret.
19. The 7th, 8th and 9th Respondents did deny the allegation by the Applicants that the file was in fact misplaced in the Court file.
20. According to the 7th, 8th and 9th Respondents, the Deputy Registrar, Milimani Law Court through a Letter dated 17.01.2019 did dispatch the file to Eldoret as Ordered by the Court.
21. Based on the Letter dated 17.01.2019 from the Deputy Registrar, Milimani Law Court, the file was received by the Eldoret Environment and Land Court through a Letter dated 12.04.2022.
22. The 7th, 8th and 9th Respondents did state that the letter dated 12.04.2022 from the Eldoret Environment and Land Court was duly copied to the Applicant's Advocates thereof.
23. In essence, the 7th, 8th and 9th Respondents did plead and submit that the Applicants were fully aware of the transmission of this file from Nairobi to Eldoret.
24. In resolving this issue, it is an admitted fact that there was an Order of Transfer that was made on the 18.12.2018.

25. The Applicants state that after the Transfer Order was pronounced on the 18.12.2018, the present file was misplaced in the Court registry.
26. However, the 7th, 8th and 9th Respondent dispute this allegation by stating that on the 17.01.2019, the Deputy Registrar, Milimani Law Court did in fact transmit the file to Eldoret through a Letter dated 17.01.2019.
27. The first aspect of this issue is whether the present file was ever misplaced in the Court's registry in Nairobi or not.
28. The duty to prove that the present file had been misplaced in the Court's Registry in Nairobi after the Transfer Order made on the 18.12.2018 was on the Applicants shoulders.
29. Unfortunately, the Applicants did not provide any document to prove that the present file had been misplaced in the Court's Registry in Nairobi after the Transfer Orders were made on the 18.12.2018.
30. Be as it may, the 7th, 8th and 9th Respondents did refer to a Letter dated 17.01.2019 done by the Deputy Registrar, Milimani Law Court forwarding the file to Eldoret Law Court.
31. Based on the Letter dated 17.01.2019 by the Deputy Registrar, Milimani Law Court to Eldoret, the Deputy Registrar, Eldoret Environment and Land Court did acknowledge receipt of the file on the 12.04.2022.
32. This Letter dated 12.04.2022 by the Deputy Registrar, Eldoret Environment & Land Court was duly copied to the Petitioner's Counsel on record.
33. Clearly therefore, the allegation by the Applicants that this file had been misplaced in the Nairobi Court Registry after the Transfer Order of 18.12.2018 is not true and is misleading.

34. The Letter dated 17.01.2019 from the Deputy Registrar, Milimani Law Court and the Letter dated 12.04.2022 from the Deputy Registrar, Eldoret Environment & Land Court confirm that the present file was actual traceable and on transit from Milimani Law Court to Eldoret Environment & Land Court.
35. The second aspect of this issue is whether the Applicants were aware that the present file had been received in the Eldoret Environment and Land Court.
36. The Applicants in the present Application allege that the Court did not inform them of the fact that the present file had actually been transmitted to Eldoret from Nairobi.
37. The Applicants state that they were under the impression that the present file had never been transmitted from Nairobi to Eldoret until after they did file the proceeding known as NAIROBI MISCELLANOUS APPLICATION NO. E008 OF 2025.
38. To resolve this aspect, the Court has perused the Letter dated 12.04.2022 from the Deputy Registrar, Eldoret Environment & Land Court and confirmed that indeed the same was copied to the Applicants Advocates.
39. The Applicants did not give any comment as to whether their Counsel had received the letter dated 12.04.2022 from the Deputy Registrar, Eldoret Environment & Land Court or not.
40. In such a scenario, the Court is of the considered view that the Letter dated 12.04.2022 from the Deputy Registrar, Eldoret Environment and Land Court was indeed served on the Applicants' Counsel's office and was fully aware of its contents thereof.
41. In essence, this Court is of the considered finding that the Applicants Counsel was well informed about the transmission

of this file from Nairobi to Eldoret Environment & Land Court through the letter dated 12.04.2022 by the Deputy Registrar, Eldoret Environment & Land Court.

42. The second issue for determination whether the Applicants were notified of the Notice of Dismissal dated 24.05.2024 or not.
43. The Applicants did plead and submit that they were never informed about the receipt of this file by the Eldoret Environment & Land Court.
44. Consequently thereof, the Applicants were under the impression that the present file was still in the Nairobi Court Registry until the proceeding known as NAIROBI MISCELLANOUS APPLICATION NO. E008 OF 2025 was filed.
45. On this basis, the Applicants were not aware of any proceedings that were on going in the present file after it was received by the Eldoret Environment and Land Court.
46. In other words, the Applicants did state that they were never aware of the Notice For Dismissal issued by this Court on the 24.05.2024 or the date of 03.06.2024 when the same was coming up for hearing.
47. The 7th, 8th and 9th Respondents were of the view that the Applicants did loose interest in this matter and have in fact been indolent in prosecuting the present Petition and/or the file the present Application.
48. As earlier stated, this Court did make a finding that the letter dated 12.04.2022 by the Deputy Registrar, Eldoret Environment & Land Court had been served on the Applicants' Counsel.

49. The Court's expectation was that the Applicants would take the appropriate action to prosecute the same after the 12.04.2022.
50. Unfortunately, there was no action taken by the Applicants until 24.05.2024 when the Deputy Registrar, Environment and Land Court did issue the Notice of Dismissal dated 24.05.2024.
51. The Notice of Dismissal dated 24.05.2024 was contained in the Replying Affidavit by the 7th, 8th and 9th Respondents herein.
52. A perusal of the Notice of Dismissal dated 24.05.2024 shows that the hearing date of 03.06.2024 was clearly indicated therein.
53. The Notice of Dismissal dated 24.05.2024 was correctly addressed to the Applicants' Counsel on record and was duly served on the 27.05.2024 by one process server known as Chacha.
54. It is therefore clear to this Court that the Notice of Dismissal dated 24.05.2024 was duly served on the Applicants Counsel on the 27.05.2024 and the date for the hearing of the same which is 03.06.2024 was indicated therein.
55. As such, this Court is of the considered finding that the Applicants were duly served with the Notice of Dismissal dated 24.05.2024 and properly notified of the hearing dated slated for the 03.06.2024.
56. Based on the determination of the two issues identified hereinabove, this Court is of the finding that the Applicants have not demonstrated any good or sufficient grounds upon which this Court should exercise its discretionary powers and set-aside the Dismissal Order issued on the 03.06.2024 or reinstate the present suit.

ISSUE NO.2- IS THE PRESENT APPLICATION MERITED OR NOT?

57. Based on the determination in Issue No. 1 hereinabove, the Court is of the finding that the present Application is not merited.

ISSUE NO. 3- WHO SHALL BEAR THE COSTS OF THE PRESENT APPLICATION?

58. Costs are usually awarded to a winning party.

59. As such, the costs of the present Application are awarded to the 7th, 8th and 9th Respondents herein payable by the Applicants.

CONCLUSION

60. In conclusion, this Court hereby makes the following orders in determination of the present Application; -

A.THE NOTICE OF MOTION DATED 20.02.2025 IS NOT MERITED AND THEREFORE DISMISSED.

B.THE APPLICANTS ARE CONDEMNED TO PAY COSTS OF THE PRESENT APPLICATION TO THE 7TH, 8TH AND 9TH RESPONDENTS HEREIN.

DATED, SIGNED and DELIVERED in ELDORET this 9TH DAY OF MARCH,2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: Brian

Counsel for the Applicant: Ms. Isiaho

Counsel for the Respondent: Ms. Chepngetich holding brief Ms. Chesoo for the 7th, 8th and 9th Respondent
Mr. Kwame for 1st - 5th Respondent